

# CONDITIONS OF SALE

## 1. Interpretation

1.1 In these conditions:

the "Buyer" means the body corporate, firm or person referred to in the order for the Goods;  
the "Company" means Brick Ability Limited (trading as Brick-Ability);  
the "Contract" means the contract for the sale and purchase of the Goods in accordance with these Conditions of Sale; and

the "Goods" means the products, items or things referred to in the order for the same.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.4 References to any national currency (or to any unit thereof) of a member state of the European Community ("Member State") shall upon such Member State (whether at inception or subsequently) becoming a participating member in a single currency ("the Euro" or "Euros") be deemed to include references to the Euro (or any unit thereof) converted at the fixed conversion rate into Euros for each participating currency as determined by the Council of Ministers and upon such national currency ceasing to be legal tender within the European Community, the Euro (or any unit thereof) shall be deemed to be substituted in its place calculated by the same fixed conversion rate.

## 2. Contract

2.1 All quotations are given and all orders are accepted on these terms which supersede any other terms appearing in the Company's catalogue or elsewhere, and override or exclude any other terms stipulated or incorporated or referred to by the Buyer whether in accepting or purporting to accept any such quotation or in making or purporting to make any written order or in any negotiations and any course of dealings established by the Company and the Buyer.

2.2 No order of the Buyer shall be deemed to be accepted by the Company unless and until written acknowledgement of order has been issued by the Company's authorised representative.

2.3 These conditions may be varied only by the Company in writing specifically addressed to the Buyer and signed by the Company's duly authorised agent for that purpose but not otherwise in any manner whatsoever. The signing by the Company's agents or employees of any of the Buyer's documents shall not imply any variation in these terms.

2.4 The Company's employees or agents are not authorised to make representations concerning the Goods unless confirmed by the authorised representative of the Company in writing. The Buyer acknowledges that there are no representations outside these terms which have induced him to enter into the Contract which are not so confirmed. For the avoidance of doubt, the Company's catalogues, technical circulars, price lists and other such documents are for the Buyer's general guidance only and the particulars contained in such documents shall not constitute representations by the Company and the Company shall not be bound thereby.

2.5 Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Buyer's own risk and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

## 3. Quotations

3.1 A quotation given by the Company shall only be valid if in writing and shall be deemed an invitation to treat. Such quotation may be withdrawn or amended and is subject to the goods being available at the date of acceptance. A quotation shall lapse if not accepted within fourteen days of posting.

## 4. Orders

4.1 Estimates given by the Company of quantities required for a job are given without any obligation upon the Company and the Buyer is solely responsible for ascertaining the proper quantities.

4.2 The Buyer shall be responsible for the accuracy of the terms of any order (including that of any applicable specifications) submitted to the Company and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms...

4.3 If any process is to be applied to the Goods or the Goods are to be manufactured by the Company in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim arising out of:

- (i) infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Buyer's specification; or
- (ii) any impracticality, inefficiency or lack of safety or other defects in the Goods where such defect is due (whether in whole or in part) to faults or omissions in information, drawings, designs, instructions, or specifications of the Buyer.

4.4 The Company reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable statutory or EC requirements or, where the Goods are to be supplied to the Company's specifications, which do not materially affect their quality or performance.

4.5 No order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

## 5. Price

5.1 The price of the Goods shall be the Company's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Company's published price list current at the date of acceptance of the order.

5.2 The Company reserves the right at any time prior to delivery of the Goods to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (to include without limitation any foreign exchange fluctuation, current regulations, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions.

5.3 Except as otherwise stated in any quotation or in any price list of the Company, all prices are quoted on all ex-works basis (unless otherwise agreed in writing between the Buyer and the Company) and where the Company has agreed to undertake or arrange delivery otherwise than at the Company's premises the Buyer shall be liable to pay the Company's charges for transport, packaging and insurance.

5.4 Except as otherwise stated in any quotation or price list of the Company, the price of the Goods is exclusive of VAT which the Buyer shall be additionally liable to pay to the Company.

5.5 The cost of pallets or returnable containers shall be charged to the Buyer in addition to the price of the Goods. The Company will give credit for all such pallets or returnable containers returned to the manufacturing works at the Buyer's expense provided the manufacturing works accept them as reusable and that the Buyer shall remain responsible for proof of return.

## 6. Terms of Payment

6.1 Unless otherwise agreed in writing between the Buyer and the Company, the Company shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Company shall be entitled to invoice the Buyer for the price at any time after the Company has notified the Buyer that the Goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods.

6.2 Unless otherwise agreed in writing between the Buyer and the Company, the Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled, but without any other deduction) within 30 days of the Company's invoice and the Company shall be entitled to receive the price, notwithstanding that delivery may not have taken place and the property in the Goods has not been passed to the Buyer. The time for payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

6.3 If the Buyer fails to make any payment on the due date then without prejudice to any of the Company's other rights the Company shall be entitled to:

6.3.1 the immediate payment of all payments outstanding in respect of the Goods supplied under the Contract and all other goods, works or services under any other contract notwithstanding the fact that the date for payment may not yet have fallen due; 6.3.2 cancel the Contract or suspend any further deliveries to the Buyer;

6.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid at the rate of 4% per annum above Barclays Bank Plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purposes of calculating interest);

6.3.4 charge the Buyer the cost of recovery of any unpaid amount including all legal costs, disbursements and bank charges incurred; and

6.3.5 appropriate any payment made by the Buyer to such of the Goods (or goods supplied under any other contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer).

6.4 Where a credit account is exceeded by the Buyer the Company shall be entitled to withhold or suspend any further deliveries to the Buyer at its discretion.

6.5 The Company reserves the right in its sole discretion to suspend or cancel any credit account opened for a Customer.

6.6 Payment shall be tendered to the Company in Sterling.

## 7. Delivery

7.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Company's premises at any time after the Company has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place. Where the Company agrees to deliver the Goods otherwise than at the Buyer's premises the Company shall be under no obligation under section 32(2) of the Sale of Goods Act 1979.

7.2 All dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Company in writing. The Goods may be delivered in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

7.3 The Buyer shall be responsible for unloading the Goods expeditiously at his expense and with his labour.

7.4 The Company's liability to deliver on site shall be limited to delivery to a position on a good hard surface nearest the site completely accessible by the good hard road.

- 7.5 Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 7.6 If the Company fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Company's reasonable control or the Buyer's fault, and the Company is accordingly liable to the Buyer, the Company's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 7.7 If the Buyer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may:
- 7.7.1 Store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 7.7.2 Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- 8. Risk and Property**
- 8.1 Risk of loss of or damage to the Goods shall pass to the Buyer at the time of delivery or, in the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Buyer that the Goods are available for collection. If the Buyer wrongfully fails to take delivery of the Goods, such risk will pass at the time when the Company has tendered delivery of the Goods.
- 8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Company to the Buyer for which payment is then due.
- 8.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Company's fiduciary agent and Bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Company's property, but shall be entitled to resell or use the Goods in the ordinary course of its business.
- 8.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Buyer shall place any of the Goods in its possession or under its control at the disposal of the Company and the Company shall be entitled to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 8.5 The Buyer shall not pledge the Goods or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Buyer does so all moneys owing by the Buyer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.
- 9. Warranties and Liability**
- 9.1 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 9.2 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.
- 9.3 Any claim by the Buyer for alleged defects, shortages, excessive breakages, failure to deliver or late deliveries or other irregularities must be notified in writing to the office of the Company where the order was placed within seven days of delivery or in the case of non-delivery or late delivery within seven days of the despatch of the advice note or invoice whichever is the earlier, or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused and the Buyer does not notify the Company accordingly, the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract. In no event shall the Buyer be entitled to reject the Goods on the basis of any defect or failure which is so slight that it would be unreasonable for him to reject them.
- 9.4 The Company's liability in all cases is limited to replacement free of charge or at its option to making a fair cash allowance not exceeding the invoice value of the goods.
- 9.5 The Company does not guarantee expressly or impliedly that the goods will be suitable or fit for use under any specific condition or for any particular purpose although such condition or purpose may be known to the Company and samples are only submitted as indications of the goods quoted for an not as any guarantee of the bulk but so far as it is able to do so the Company will pass to the Buyer the benefit of any manufacturers' guarantee given when the orders are supplied.
- 9.6 Nothing in this clause 9 shall be deemed to exclude or restrict the Company's liability for death or personal injury caused by the Company's negligence.
- 9.7 The Company shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, conditions or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of Goods or their use or resale by the Buyer, and the entire liability of the Company under or in connection with the Contract shall not exceed 125% of the price of the Goods, except as expressly provided by these Conditions.
- 10. Force Majeure**
- 10.1 The Company shall not be liable for any delay in performing or failure to perform any of its obligations in relation to the Goods arising from circumstances beyond its control.
- 10.2 Non-exhaustive illustrations of such circumstances would be Act of God, war, riot, explosion, abnormal weather conditions, fire, flood, strikes, lockout, Government action or regulations, delay by suppliers, accidents and shortages of materials, labour or manufacturing facilities.
- 10.3 If such delay or failure persists for more than 3 months then either party shall be entitled to terminate the Contract but the Buyer shall remain liable to pay for Goods delivered prior to the date of such cancellation.
- 11. Insolvency**
- 11.1 This clause applies if:
- 11.1.1 A receiver is appointed over or an encumbrancer takes possession of any assets of the Buyer;
- 11.1.2 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) that individual or firm becomes bankrupt or shall in Scotland become Notour bankrupt or be sequestrated or (being a company) goes into liquidation (other than a voluntary liquidation for the purpose of amalgamation or reconstruction) becomes subject to an administration order; or
- 11.1.3 The Buyer ceases, or threatens to cease, to carry on business; or
- 11.1.4 The Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 11.2 If this clause 11 applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 12. General**
- 12.1 The Buyer shall not assign this Contract without the Company's written consent.
- 12.2 The proper law of the Contract shall be English Law or where the Contract is placed with a Scottish Office of the Company, Scottish Law.
- 12.3 Any notice required or permitted to be given hereunder shall be in writing addressed to the party concerned at its registered office or principal place of business or such other address as that party may from time to time notify in writing and shall be deemed to have been served if sent by post 48 hours after posting.
- 12.4 No waiver of the Company of any breach of the Contract by the Buyer shall be considered a waiver of any subsequent breach of the same or any other provision.
- 12.5 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected.

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